

ONE HUNDRED AND SEVENTH DAY
Saturday, 13 April 1946

Morning Session

COL. AMEN: Defendant, as I recall, you have testified that you had no knowledge of the Hitler Commando Order of 8 October '42 until some time in 1945. Is that not correct?

KALTENBRUNNER: I do not think that I said so. I believe that concerns the order...

COL. AMEN: Well, that was your testimony yesterday, according to the record, that you had no knowledge of the Hitler Commando Order of 8 October '42 until some time in the year 1945. Is that not correct? Is that not now your position?

KALTENBRUNNER: I do not believe that I made such an answer. The order is...

COL. AMEN: Well, what is the fact? When did you first have knowledge of the Hitler Commando Order of 8 October 1942? I am speaking of the order of 18 October '42, not 8. When did you first have knowledge of that?

KALTENBRUNNER: I cannot tell you that now, exactly.

COL. AMEN: All right.

KALTENBRUNNER: In any case, this order, if it were read to me, would probably be the same one which appeared in a Wehrmacht report or in the press.

COL. AMEN: All right. And you have also denied the testimony of your own witness, Mildner, concerning the existence of a decree' issued in July or August '44, under which the Security Police were to execute members of Allied commando groups after questioning them. That is correct, is it not?

KALTENBRUNNER: I was never asked about that.

COL. AMEN: Well, I beg your pardon; but never mind, anyway. I will show you Document Number 535-PS, which will become Exhibit USA-807; and, before anything else, I want to ask you whether it is your own signature, in your own handwriting, that appears at the bottom of that document.

[The document was submitted to the defendant.]

KALTENBRUNNER: Yes. That is my signature.

365

13 April 46

COL. AMEN: Oh, it is your signature, is it?

KALTENBRUNNER: Yes.

COL. AMEN: You admit that? Is that right?

KALTENBRUNNER: That is my signature, yes. ~

COL. AMEN: Now, when you were interrogated before this Trial, you denied that that was your signature, did you not?

KALTENBRUNNER: No, I do not believe so.

COL. AMEN: Well, I will read you your testimony on that point, to see whether that helps you to remember whether you denied it or not.

"Answer: 'From that it can only be seen that the Wehrmacht intended to write a letter to me; whether rightly or wrongly, and whether I was the right authority to write to is very questionable. In any case, the Wehrmacht wanted to get in touch with the Gestapo, as can be seen from this exchange of letters, and I am convinced that an officer of the Gestapo, namely, the one mentioned at the beginning of the letter, is the one who wrote this document.'

"Question: 'Well, this is the letter that you know nothing about, but which, nevertheless, established just how you accomplished your desires by writing to the Supreme Command of the Armed Forces. That is very clear.'

"Answer: 'But I deny that I wrote this letter.'

"Question: 'Just a moment ago, you didn't know about it, but now you deny it?'

"Answer: 'I not only did not know about the Hitler Order, but I also knew nothing about this letter.'

"Question: 'But you acknowledged your signature?'

"Answer: 'I did not say that this is my signature. I only said it resembles my signature; and I also said it is possible that it is only a facsimile. I cannot recall a letter of such contents signed by me.'

"Question: 'Would it be any more convincing to you if you saw the original letter, signed in ink?'

"Answer: 'It would certainly be more convincing, but it still would not prove that I signed in ink.'"

Did you make those answers to those questions, Defendant?

KALTENBRUNNER: Naturally, I do not remember whether I

made these answers literally. But, I would like to make the following remarks to you. Questions concerning my signature have

naturally always been put to me hundreds of times during interrogations, especially to confuse me. Today-I believe this is the first

time I have seen this document—I immediately declared, "Yes, this is my signature." I certainly know my own signature; I can recognize it. However, you have also shown me signatures which certainly were not mine.

Besides, you can see from the date of the letter, 23 January 1945, that it is correct that I learned about it in 1945, as you have already stated. I could not have the faintest notion of a Hitler order issued in the year '42. And if, in your interrogation which you just read to me, I stated that I did not write this letter, then this is confirmed by the very figures which appear on top, where you read IV A 2 a, plus numerals and letters which obviously indicates that the letter was written in a section which was in charge of these matters.

That is what I mean when I say that I did not write this letter. That it may have been submitted to me for my signature among thousands of other papers which I might have had to look into possibly in the course of one day, I cannot, of course, deny. From this, however, you cannot draw the conclusion that I undoubtedly knew about the matter. You cannot imagine the extent of the official functions which I took over in complete ignorance of police background, without instructions for carrying out police functions, but rather for organizing and directing the vast intelligence service.

THE PRESIDENT: Answer questions and do not make speeches.

COL. AMEN: Defendant, is not the signature on that document before you, Document Number 535-PS, USA-807, precisely the same and identical with your signature as it appears on Document Number 3803-PS, USA-802? Just look at the two signatures, and tell the Tribunal if they are not identical.

KALTENBRUNNER: No, I never signed in that way. I always signed, "Dr. K.," as on this document, even in informal letters.

COL. AMEN: How about the handwriting? Does that look the same to you, Defendant, or does it look different?

KALTENBRUNNER: Yes, certainly there is a kind of resemblance, but I think it has happened to every person in this courtroom that in his absence any one of his assistants at times signed a particularly urgent letter using his name.

THE PRESIDENT: Colonel Amen, the Tribunal will be able to see the signatures and judge for themselves.

COL. AMEN: Very good, Sir. Now, do you have the exhibit before you, 535-PS?

KALTENBRUNNER: Yes.

367

13 April 46

COL. AMEN: You will note that that emanates from IV A 2 a, as appears in the upper corner under Chief of the Security Police and of the SD.

KALTENBRUNNER: Yes, and at the beginning you said the letter was written by me.

COL. AMEN: That it is addressed to the High Command of the Armed Forces, right?

KALTENBRUNNER: Yes.

COL. AMEN: And that it refers to the Fuehrer Order of 18 October '42, as well as to the other Fuehrer orders referred to in the testimony of Mildner, namely, the Fuehrer orders of 18 August '44 and 30 July '44, correct?

KALTENBRUNNER: I did not know that Mildner testified on this point. Such a statement is not known to me, nor has it been submitted to me. But, I believe, it proves.. .

COL. AMEN: All right. Do you note that this document refers to the Fuehrer decrees of 18 October '42, 18 August '44, and 30 July '44. Yes or no, please.

KALTENBRUNNER: Yes. It says so here.

COL. AMEN: So that on 23 January '45 when you wrote this letter, you obviously had knowledge of those decrees, right? I mean...

KALTENBRUNNER: That is incorrect inasmuch as, in my opinion, the most important item in this letter is contained in the sixth, fifth, and fourth lines from the end: Here it says that they can make no claim upon the allowances for prisoners of war in accordance with the Geneva Convention. If, then, under the pressure of work this letter was submitted to me, it is evident that my eyes would first fall on the spot where I had to sign and also on the last lines. Here...

THE PRESIDENT: Defendant, that is not an answer to the question. The question was whether you knew the order of the 18th of October '42, of 30 July '44, and 18 August '44, when you wrote this letter. Did you know?

KALTENBRUNNER: No, I did not know of these orders, Mr. President.

COL. AMEN: All right...

KALTENBRUNNER: But please, would you let me defend myself on this point. It was clear to me that this dealt with the treatment of agents to whom the provisions of the Geneva Convention for prisoners of war are not applicable; and you cannot deny a power

368

13 April 46

at war the right to let its security police take in hand those men who do not come under the regulations of the Geneva War Convention. That is the perfect right of any power at war. There there also German agents who were engaged in hostile activity in England and other countries.

THE PRESIDENT: Defendant, you are not here to argue your case now; you are here to answer questions.

COL. AMEN: Defendant, you testified, did you not, that you first acquired knowledge of the case of the British fliers who escaped from Stalag Luft III in March of 1944, some 6 weeks after the escape occurred; is that not correct?

KALTENBRUNNER: Yes, now I assume it was about 6 weeks afterwards; at any rate, it was just when, in consequence of the speech in the House of Commons, the Foreign Office took a stand. The department chiefs turned to me, but I in turn sent them to Himmler.

COL. AMEN: But when you were interrogated about this matter before the Trial, you testified as follows, did you not?

"Question: 'You remember the case of the 80 British fliers who escaped from Stalag Luft III, which took place in March '44?'

"Answer: 'That case is unknown to me.'

"Question: 'General Westhoff attempted to find out from the Gestapo what had happened to these men.'

"Answer: 'If he had negotiations with the Gestapo, he did not negotiate with me.'

"Question: 'What do you say about the general proposition that escaped prisoners were turned over to the Gestapo?'

"Answer: 'Such cases are not known to me.' "

Did you make those answers, yes or no?

KALTENBRUNNER: It is possible that I did; but I wish to point out to you that naturally I was completely confused by the manner in which these questions were put. I never really heard of 80 escaped airmen. Here, too, mention was made of 50 only.

COL. AMEN: For your information, 80 escaped and 50 there killed.

KALTENBRUNNER: And in addition, General Westhoff stated here that he did not discuss the Sagan case with me, but that he tried to obtain information from the State Police, that he spoke to me about the transfer of prisoner-of-war affairs to Himmler, who was the Commander of the Reserve Army, and that Sagan was referred to on this occasion.

369

13 April 46

COL. AMEN: Now, Defendant, you testified that you had no knowledge whatever of the fact that Einsatz groups of the Security Police and SD were operating in the U.S.S.R. until long after you had become Chief of the RSHA in January '43, is that not correct?

KALTENBRUNNER: Yes.

COL. AMEN: And you still say that that is correct?

KALTENBRUNNER: Yes.

COL. AMEN: You deny that you ever knew that these Einsatz groups carried out the extermination of Jews in the U.S.S.R. until long after you had become Chief of the RSHA?

KALTENBRUNNER: I only discovered this during the arguments I had with Himmler and Hitler-I believe later in 1943- probably in November.

COL. AMEN: And you admit, I take it, that you were a Higher SS and Police Leader in Austria in 1942, right?

KALTENBRUNNER: Yes.

COL. AMEN: And Schirach was a Reich Defense Commissioner in Vienna at that time, was he not?

KALTENBRUNNER: I do not know when he was appointed, but I must point out that the Higher SS and Police Leaders received those powers with which they finally were invested in three different stages. In 1941, when I became Higher SS and Police Leader, the authority of such a leader was considerably less than it was at the end of the war.

COL. AMEN: Now, if the Tribunal please, I have a document which arrived by airplane yesterday, of which there is only one original copy and which, therefore, we have not been able to get translated. So I have arranged, if it is satisfactory to the Tribunal, for the interpreter to read the excerpts from that original document, which was taken from Schirach's personal files in Vienna, and then submit the original document to the Court and have it processed just as quickly as we are able to do so. Or perhaps the Tribunal would like to see the document first. It is an original document.

THE PRESIDENT: You will read it so that it will go through into German?

COL. AMEN: Yes, Your Lordship.

THE PRESIDENT: Very well.

COL. AMEN: This is Document Number 3876-PS. It is a report issued by Heydrich to all the Higher SS and Police Leaders and Reich Defense Commissioners on the activities of the Einsatz groups in the U.S.S.R. during the month of January 1942, and on the distribution list appears the name of this defendant.

370

13 April 46

Will you read the Exhibit USA-808?

THE INTERPRETER: The righthand side of the document bears the initials in ink, "Sch." and then several symbols, "ZRVK 4030519/41 g," and below that, "1320C." At the left on top:

"The Higher SS and Police Leader attached to the Reichsstatthalter in Vienna and in Upper and Lower Danube, within Wehrkreis XVII; the Inspector of the Order Police."

Below that there are several file numbers. The document bears the heading, "Secret." It is dated, "Vienna, 14 October 1941... Subject: Technical report on the battles in the East."

THE PRESIDENT: Is that right, 14 October 1941?

THE INTERPRETER: Yes, 14 October 1941.

THE PRESIDENT: The previous date that was given was January 1942. What is the explanation of that?

COL. AMEN: It covers the month-I think there are two different documents there. You are giving the date on one. There is a different date on the other. Is that not correct?

THE INTERPRETER: That is correct.

COL. AMEN: Well, give us the date on the other document so the record will be clear.

THE PRESIDENT: Colonel Amen, we shall be able to understand when we see the document.

COL. AMEN: Yes, Your Lordship. *[Turning to the interpreter.]* Go right ahead.

THE INTERPRETER: The date of the other document is April 23, 1942.

COL. AMEN: Go ahead.

THE INTERPRETER: I continue:

"Subject: Technical report on the battles in the East. Reference..."-and then come series of file numbers-

"The above decree of the Reichsfuehrer SS and Chief of the German Police in the Ministry of the Interior, and also one copy each of the technical reports of the Army Command North and the SS Police Division, are herewith forwarded to you for your information and use."

The order is signed "Miegel."

COL. AMEN: Now, will you just go on to the distribution list and read, if you find it on the list, this defendant's name.

THE INTERPRETER: The name of the defendant is not on this distribution. I am coming to the next document.

371

13 April 46

COL. AMEN: Well, it is!

THE INTERPRETER: No, it is not contained in this document, and I am now reading the second document:

"Berlin, 27 February 1942. The Chief of the Security Police and the SD, IV A 1 ..." -and then several different file references- ~

"Top secret. Subject: Activity and situation report Number 9 of the Einsatzgruppen of the Security Police and the SD in the U.S.S.R. Attached hereto..."

COL. AMEN: Just a minute. He is reading the wrong document, Your Lordship. We will have it straight in a minute.

THE INTERPRETER: I am told I am reading the right document. It is the right document, I continue:

"Herewith attached, I submit to you the ninth comprehensive report regarding the activities of the Einsatzgruppen of the Security Police and of the SD in the U.S.S.R. In future these reports will be sent to you currently as they appear. Signed, Heydrich." .

Then there is a stamp, "The Reich Defense Commissioner for the Wehrkreis XVII, received 5 March 1942;" and then follows the distribution, of which Number 13 reads, "To the Higher SS and Police Leader, SS Gruppenfuehrer, Dr. Kaltenbrunner."

COL. AMEN: His name is on the list, is it not? Now, if you will skip to "C" on that document.

THE INTERPRETER: I now read from Page 9 of the document, an extract under the heading "C. Jews:"

"The attitude of the Jews towards the Germans is still clearly hostile and criminal. It is our aim to cleanse the Eastern countries of Jews as completely as possible. Everywhere the executions are to be carried out in such a manner that they will hardly be noticed by the public. Among the population, . and even among the remaining Jews, the conviction is widespread that the Jews have merely been resettled. Estonia has already been cleared of Jews. In Latvia the 29,500 Jews who remained in Riga have been reduced to 2,500. In Dunaburg there still live 962 Jews who are urgently needed for work." I am now skipping several paragraphs and I continue:

"In Lithuania there are now in Kaunas still 15,000 Jews, in Schaulen 4,500, and in Vilna another 15,000 who are also needed for work. In White Ruthenia the Jews are being cleared out. The number of Jews in the part of the country which has so far been turned over to the civilian administration amounts to 139,000. In the meantime 33,210 Jews have

372

13 April 46

been shot by the Einsatzgruppen of the Security Police and the SD."

I now skip the rest of this extract and continue by reading another document. This is dated, "Berlin, 23 April 1942," and shows an illegible initial in ink. It bears the heading, "The Chief of the Security Police and the SD, IV A 1," and several file numbers. It bears the designation, "Top secret." This document, which is signed by Heydrich and which shows as the date of receipt 28 April 1942, lists in the distribution in the 14th place, "To the Higher SS and Police Leader, SS Gruppenfuehrer, Dr. Kaltenbrunner, Vienna."

I now read from Page 11 of the report, and I read an extract headed "C. Jews":

"Different methods were used in solving the Jewish problem in the various front sectors. Since the greater part of the Eastern territory is free of Jews, and since the few remaining Jews, who are required for most urgent work, have been put into ghettos, it was the task of the Security Police and the SD to round up those Jews who were hiding mainly in the country. Many times Jews who had left the ghetto without permission or who were not wearing the Jewish Star have been arrested. Among others, three Jews who had been sent from the Reich to the ghetto in Riga and who had escaped, were captured and publicly hanged in the ghetto. During large-scale anti-Jewish operations 3,412 Jews in Minsk, 302 in Vileika, and 2,007 in Baranowicze were shot."

I now skip three paragraphs and continue:

"In addition to taking action against individual Jews who were known for their political or criminal activity, it was the task of the Security Police and the SD, to clean up generally the larger towns in the remaining territories of the Eastern Front. Thus, in Rakow alone 15,000, and in Artenowsk 1,224 Jews were shot, so that now there are no more Jews there. In the Crimea 1,000 Jews and Gypsies were executed."

That is all.

COL. AMEN: Defendant, do you still have the temerity to tell this Tribunal that you knew nothing about the operations of these Einsatz groups until after you took over as Chief of the RSHA?

KALTENBRUNNER: At the top left hand corner of the document can clearly be read, "The Higher SS and Police Leader..."

THE PRESIDENT: Answer the question and then you can look at the document afterwards. Do you still say that you knew nothing about these Einsatzgruppen?

KALTENBRUNNER: I have no knowledge of the contents of this document. I want to point out that the Office of the Inspector of

373

13 April g6

the Public Police dispatched this letter on 22 October 1941. Technical reports on the fighting on the Eastern Front and on the operations of the Security Police and SD, which were drafted at that time, are based on orders issued by Himmler or Heydrich and not on my orders. In no way can this document show how I regarded the entire question. If the distribution lists all the Higher SS and Police Leaders and all the offices to which these technical reports were sent, I do not regard that as proof that these offices, that is to say all the men who were working in these offices—must necessarily have known of it. You cannot assume that cognizance was actually taken of reports concerning territories over which the official in question had no jurisdiction or influence whatsoever. There is no doubt at all today that these crimes were committed in the East. But it is to be proved whether they are in any way due to my

influence, either intellectually, legislatively, or administratively, and whether I approved of them, and whether I could have stopped them; all this I must absolutely deny.

COL. AMEN: Defendant, that was just one of a regular series of monthly reports, a copy of which went to you every single month. Is that not a fact, yes or no?

KALTENBRUNNER: I do not know how often such reports came. I see this report today for the first time. Of course, it cannot be denied that such technical reports from all battle zones concerning either the Security Police, or the Order Police operations, or the experiences of the Wehrmacht were issued and distributed all over the Reich.

COL. AMEN: All right, that is enough for me. Did you know about a letter written by your attorney, seeking evidence on your behalf at this Trial?

KALTENBRUNNER: I have not yet discussed such a letter with my Defense Counsel. Please ask him if he has informed me of this letter.

COL. AMEN: Well, are you not familiar with the fact that he wrote a letter to the Mayor's office in Oranienburg near Berlin and received a reply to that letter to be used on your behalf?

KALTENBRUNNER: No. Please ask him. He has not told me anything about it.

COL. AMEN: Now, then I will refer you to document number. ..

THE PRESIDENT: Colonel Amen, are you entitled to go into professional matters between the defendant and his counsel?

COL. AMEN: I believe so in this instance, Your Lordship, because the letter was sent to us directly by the recipient of the letter, with the expectation that it would be used by us. This is no confidential communication. It was a letter...

374

13 April 46

THE PRESIDENT: Will you let the Tribunal see the letter?

COL. AMEN: Yes, Sir.

DR. KAUFFMANN: Mr. President, this is the first time that I have heard of this matter. If the document is addressed to me, may I perhaps have a look at it before it becomes an item in this Trial?

COL. AMEN: Sure.

THE PRESIDENT: Yes, certainly, let him look at it first.

COL. AMEN: If Your Lordship please . . .

DR. KAUFFMANN: May I explain it, Mr. President?

THE PRESIDENT: Well, we had better hear from Colonel Amen first because he wants to introduce the document.

DR. KAUFFMANN: May I say something first?

THE PRESIDENT: Yes, Dr. Kauffmann, what do you want to say now?

DR. KAUFFMANN: Perhaps the Tribunal has already noticed that I...

THE PRESIDENT: We have not seen the document.

DR. KAUFFMANN: I have seen the document.

THE PRESIDENT: I said we have not seen it yet. We have allowed you to see it first in order that you can make any objection to it that you want to make before we see it, and then we will look at it.

DR. KAUFFMANN: Yes, I see. Mr. President, I am of the opinion that this is an unfair infringement on the rights and duties of the German Defense. The whole world may read this document. It is an inquiry which is addressed to the Mayor's office at Oranienburg. Oranienburg was a large concentration camp. Since, according to an agreement with my colleagues, I had the task of clarifying the question of the "awareness of the German people," I sent this letter containing questions which everybody may read to the Mayor's office and requested that these questions be answered. It was my intention to submit these answers, if the occasion arose, to the Tribunal. The same questions have been sent out to other towns, and I have already submitted these documents for translation and shall later submit them to the Tribunal. But it is an impossible state of affairs that a letter of a defense counsel and the reply given to that defense counsel should be disclosed here by the Prosecution.

THE PRESIDENT: Wait a minute, Dr. Kauffmann. But the document that Colonel Amen was offering in evidence was not your letter to the Mayor of Oranienburg nor his answer to you.

COL. AMEN: Yes, it was.

375

13 April 46

THE PRESIDENT: I beg your pardon, I thought you said it was a letter that has been sent to the Prosecution.

COL. AMEN: I said that a copy was sent to the Prosecution: As I understand it, not only by the person who received it--there was no covering letter--but also turned over to the British Prosecution in a letter dated '46 from Major Wurmser.

THE PRESIDENT: I understand now. I do not think you said before it was a copy. What I understood was it might have been sent to you by mistake. If it were a copy of a letter which was sent to Dr. Kauffmann, then the position is clear as to what it was.

COL. AMEN: That is my understanding of it, Sir. And, of course, it is a copy of his letter but I know of no privilege whatsoever of a confidential...

THE PRESIDENT: What do you mean by "a copy of his letter"? A copy of the letter sent to Dr. Kauffmann?

COL. AMEN: Sent by Dr. Kauffmann to the Mayor of Oranienburg and a copy of the reply made by the Mayor to Dr. Kauffmann; and I think you will see, if Your Lordship reads the reply, how it is that it came directly to our attention.

DR. KAUFFMANN: May I add one more thing, only two or three sentences, please? I consider the presentation of these two documents a particularly severe infringement of the rights of the Defense.

The Defense has had no opportunity to look at the documents of the Prosecution, and it would never have occurred to us to submit to the Tribunal documents of the Prosecution which are to our advantage. This is exclusively a matter between me, the sender of the letter, and the office answering it; how is it possible for the Prosecution to be allowed to interfere in such entirely personal matters? I do not think that is fair.

COL. AMEN: Now, if Your Lordship pleases, I think I can clear the whole thing up. This is a letter dated 2 April '46 from Major Wurmser to the British Prosecution, and it reads as follows:

"Attached please find the original correspondence regarding Oranienburg. In accordance with your request, I have ascertained that this correspondence was received in the following way. It came addressed to the Prosecution and was delivered to the General Secretary. The original was apparently sent directly to Dr. Kauffmann and the sender, the Mayor of Oranienburg, a Mr. Klaussmann, dispatched at the same time a carbon copy to the Prosecution which not only consisted of his answer but also of the letter which was sent to him by Dr. Kauffmann."

THE PRESIDENT: Yes, I think we understand the circumstances now.

376

13 April 46

COL. AMEN: So I think it was sent to the Prosecution for the very purpose for which I am now endeavoring to utilize it.

THE PRESIDENT: Colonel Amen, apart altogether from the question of privilege between counsel and his client, how do you say that this document, which is a letter apparently from a private individual addressed to Dr. Kauffmann, copy of which is sent to you, is evidence at all?

COL. AMEN: Because, Your Lordship, there is included in this defendant's document book a letter which is on precisely this same point. In other words, this defendant has raised this point in his own defense. He did not read the letter.

THE PRESIDENT: That is not quite the point. This letter to Dr. Kauffmann, of which you have a copy, is not as I understand a sworn statement.

COL. AMEN: It is not sworn; no, Sir.

THE PRESIDENT: How does it become evidence then? The witness is not here.

COL. AMEN: It has the same probative value that many letters introduced here in evidence have. In fact, I think it has considerably more than many of them, because it is a letter from an official, from the mayor who has conducted an inquiry and has ascertained what I consider to be one of the most important matters in the case—namely, whether...

THE PRESIDENT: No, I do not want to hear at the moment what is in the letter.

COL. AMEN: I cannot think of a thing that was more pertinent than this letter, or more important, to be brought out at this Trial, particularly when it—well, you do not want me to go into that—particularly when it is something which the defendant has sought to interpose as his own defense, and which now turns out...

THE PRESIDENT: But he has not sought to introduce it for his own defense.

COL. AMEN: Well, I say he has sought to introduce that issue by the letter in his document book so that, even were it not otherwise perhaps relevant, it surely becomes so when the defendant has raised that precise issue in his own documents. But even aside from that, it seems to me that it is one of the most important issues in this case.

I will not characterize it in words since Your Lordship does not wish me to, but I can hardly think of anything more pertinent than the matter set forth there in the form of an official communication.

377

13 April 46

THE PRESIDENT: Colonel Amen the only question I was asking you was how the particular document, which IS unsworn document, came to be competent evidence. Has it been seen by the witness who is under cross-examination?

COL. AMEN: Well, as an official communication, Sir, to his counsel. In the course of the discharge of his official duties as a mayor—it is a part of his job.

THE PRESIDENT: Yes, Dr. Kauffmann.

DR. KAUFFMANN: Mr. President, I do not wish to speak now about the question of procedure. I merely want to mention that this letter . . .

THE PRESIDENT: Wait a minute.

DR. KAUFFMANN: I do not want to deal at great length with the question of procedure which we touched upon just now, but I wish to emphasize that these two documents have nothing to do with the case of Kaltenbrunner as such. As I have just said, anyone may look at the document; but, since this document has nothing to do with Kaltenbrunner, it has from the very outset no value as evidence.

COL. AMEN: Well, it has even further probative value, Your Lordship, in that, if the matters referred to in this letter were known, as described in the letter to the people in Oranienburg, surely the person who occupies the position as Chief of the RSHA in Germany must certainly have the knowledge which the smallest local civilian appears to have.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken]

THE PRESIDENT: The Tribunal rules that the document is inadmissible.

COL. AMEN: That was to have been my last document, Your Lordship; so that concludes the crossexamination, except for one point. There is a witness named Hoess, who is called on behalf of the defendant, and through whom I would like to introduce two exhibits. If he is not to be called, however, then I would like to introduce those exhibits through the defendant. So I am wondering whether we could obtain a definite statement as to whether or not the witness Hoess is actually to be called by the Defense.

THE PRESIDENT: Dr. Kauffmann, are you proposing to call Hoess?

DR. KAUFFMANN: Yes.

378

13 April 96

THE PRESIDENT: You are.

DR. KAUFFMANN: I have no further questions to put to the defendant.

THE PRESIDENT: I am afraid I did not hear what you said, Dr. Kauffmann.

DR. KAUFFMANN: I have no further questions.

THE PRESIDENT: Then the defendant can return to his seat. Wait a minute, wait a minute!

CHIEF COUNSELLOR OF JUSTICE L. N. SMIRNOV (Assistant Prosecutor for the U.S.S.R.): Just a minute-stay! Mr. President, we have a few questions to put to the defendant.

THE PRESIDENT: Colonel Smirnov, we understood the other day that the Counsel for the Prosecution had agreed that there should be only one crossexamination of the Defendant Kaltenbrunner.

MR. COUNSELLOR SMIRNOV: We wish to request the Tribunal to allow us to put to the defendant a few questions, which will not take very long but which are quite indispensable for further questioning.

THE PRESIDENT: In the opinion of the Tribunal, I think you know counsel ought to settle beforehand what questions are indispensable and then have them put by the counsel who cross-examines. That is the whole object of the scheme.

Sir David, when we saw you on this subject, did you not tell us that all the prosecutors had agreed that so far as this defendant was concerned he should only be cross-examined by one?

SIR DAVID MAXWELL-FYFE: My Lord, that was the position. I understand that the Soviet Delegation have some special points, and they were going to ask, as a matter of grace of the Tribunal, whether they could put them. That is what my Soviet colleagues have informed me.

THE PRESIDENT: M. Dubost?

M. CHARLES DUBOST (Deputy Chief Prosecutor for the French Republic): My explanation will be very brief, Mr. President. In principle, the Prosecution entrusts one man to ask all these questions. It is impossible, however, for the entire investigation and examination to be carried out by one member of the Prosecution only because we do represent four different nations which have not divergent but certainly individual interests. The only person qualified to speak in the interests of a nation is the representative of that nation. I think, therefore, that the Tribunal should permit us to ask questions from time to time when we ask to be allowed to do so.

379

13 April 46

THE PRESIDENT: M. Dubost, you are not applying now, are you, for leave to have a third cross-examination; you are just speaking on general principles?

M. DUBOST: Mr. President, it is a question of principle. The Prosecution has limited itself in order to economize on time, but it requests the Tribunal for authorization to intercede when it is necessary to do so in order to represent the interests of a country.

I will not ask any questions which might have occurred to me following the interrogation by my colleague of the United States; I do not wish to retard the proceedings. I think, however, that the Tribunal could tell us that in principle we remain free to ask questions which concern our countries, especially since we alone are competent to represent the interests of our countries and cannot transfer this competency to one of our colleagues.

THE PRESIDENT: Colonel Smirnov, could you inform the Tribunal upon what questions, what points you want to cross-examine?

MR. COUNSELLOR SMIRNOV: Yesterday, when the defendant was replying to Colonel Amen's questions and denying his participation in the extermination of the Jews in the Warsaw Ghetto, he stressed that the Chief of Police in occupied Poland, Kruger, was allegedly directly subordinated to Himmler and had no connection with Kaltenbrunner at all. In the Polish documents which have just reached me, and in connection with which the Soviet Delegation has changed the order which it has primarily intended to observe, in these Polish documents there is...

THE PRESIDENT: I understand that point. Are there any other points?

MR. COUNSELLOR SMIRNOV: The second point refers to another document already submitted by the Soviet Delegation, and this point has not been covered by the preceding question; but it is of intense interest from the viewpoint of the documents previously presented. It is in regard to these two questions that I wish to examine the defendant.

THE PRESIDENT: You are aware that we are going to adjourn at half past 12 for the purpose of dealing with the documents of the Defendant Rosenberg, but you may certainly cross-examine upon these points if you will do it as shortly as you can.

MR. COUNSELLOR SMIRNOV: I believe, Mr. President, that we shall be able to finish the cross-examination in 15 minutes.

THE PRESIDENT: Very well.

MR. COUNSELLOR SMIRNOV: Witness, Colonel Amen yesterday submitted to the Tribunal a document which disclosed your

380

13 April 46

active participation in the liquidation of the Warsaw Ghetto. Perhaps you can tell us under whose orders the police were. Rebutting this document you dwelt at great length on the fact that the Police Chiefs in the occupied territories were directly subordinated to Reichsfuehrer SS Himmler and had nothing to do with you.

Do you stick to this statement?

KALTENBRUNNER: Yes, but it should be supplemented. I also said yesterday that the Higher SS and Police Chief in the Government General was subordinate to Himmler and that, in turn, the SS and Police Leaders of the smaller districts were subordinate to him.

MR. COUNSELLOR SMIRNOV: Perhaps you can tell us to whom the police officials were subordinate?

KALTENBRUNNER: The commanders of the Security Police, the Order Police, and the Waffen-SS were subordinate to the Higher SS and to the Chief of Police. They were also subordinated to the Chiefs of Police and SS in the smaller districts.

MR. COUNSELLOR SMIRNOV: Perhaps you can remember your second statement as well, when you declared yourself opposed to Kruger's extreme tendencies towards the Polish Jews, and that you had even attempted to restrain him?

KALTENBRUNNER: I have stated that I agreed with Frank in favoring the release of Kruger—that is, his transfer from the Government General.

MR. COUNSELLOR SMIRNOV: I would like to hand Frank's diary to the defendant.

[The document was submitted to the defendant.]

Let him turn to Page 13, where Kruger is mentioned, and then to Page 16. From this Page 16, I shall read three paragraphs. Read and follow if it has been carefully translated, "There is no doubt"—says Kruger—"that the removal of the Jews has had a favorable effect on pacification..."

KALTENBRUNNER: That passage has not been submitted to me here. I have Page 13 of the document in my hand.

MR. COUNSELLOR SMIRNOV: Well then, we shall show you Page 16, beginning with the words "There is no doubt..." I begin again:

"There is no doubt but that the removal of the Jews has also had a favorable effect on pacification. It was for the police one of their gravest and most unpleasant tasks; but it had to be carried out by order of the Fuehrer, since it was necessary in the interests of Europe."

I omit one paragraph and would ask you to do the same:

381

13 April 46

"One was forced to remove the Jews from the armament industries and from all industries and factories of military and economic interest unless they are exclusively employed on important war work. In such cases the Jews were collected in the large cam-PS and from there sent by day to the munition factories. The Reichsfuehrer SS, however, desires that the employment of these Jews stop, too. He had a long conversation on this subject with Lieutenant General Schindler and is of opinion that this wish of the Reichsfuehrer SS cannot be carried out in full. There are among the Jewish workers specialists, skilled mechanics, and other qualified artisans who cannot at present be replaced by Poles."

I draw your attention to the next sentence:

"He therefore requests the SS Obergruppenfuehrer, Dr. Kaltenbrunner, to describe the situation to the Reichsfuehrer SS and. to request him to refrain from removing these skilled Jewish workers. The physically best conditioned of the Jews had been retrained by the industries, the so-called 'Maccabeans,' who worked magnificently, as well as female workers who had proved physically stronger than the male Jews. We experienced the same conditions in the clearing of the Warsaw Ghetto. By the way, this task had been very difficult."

I omit a sentence and quote the following:

"It has been proved that here, too, the Jewesses, arms in hand, had fought the men of the Waffen-SS and the police to the end."

Do these passages not prove that Kruger considered you as his commanding officer, and that when the majority of Jews had already been murdered in Poland and only a very small number of good specialists were left, Kruger appealed to Himmler-through you, as his chief-to allow these Jews to live? Does this not bear witness to the fact that Kruger considered you as his chief and acted through you?

KALTENBRUNNER: No, Mr. Prosecutor. This document, on the contrary, proves something quite different. In the first place, he himself says here that the evacuation of the Warsaw Ghetto had previously taken place; in the second place, he says that he begs me to go to Himmler and to remonstrate with him. What I said to Himmler is not contained in the document; and the fact that, on that occasion, I told Himmler for the first time, "Now I know what is going on," and protested against it, does not appear in this document. But surely I must be given the opportunity to declare and prove here that I took steps against this action; and if you cross-examine Frank or the witnesses...

382

13 April 46

MR. COUNSELLOR SMIRNOV: One moment, you have already mentioned this, Defendant.

KALTENBRUNNER: I have not finished. I have not yet finished this point. If you question the witnesses on the subject of "Government General," you will discover exactly how, on that occasion, I paid my first and only visit to the Government General, and that what I experienced and learned there became the subject of a discussion with Himmler. You cannot accuse me, on the one hand, of knowing of all these things without giving me, on the other hand, the opportunity to describe what were my reactions. In the last 2 years of the war, circumstances placed me in a position where I was able to see what was happening in the Reich and later on, near the end, in the Government General as well. But you are not giving me an opportunity to explain how I reacted, I the man who had the misfortune to get such a position at the end of the war

MR. COUNSELLOR SMIRNOV: One little moment. But why did Kruger act through you?

KALTENBRUNNER: And further, this document does not indicate in any way in what capacity I was there; not once does he mention that I was there as his police superior. He knows only that naturally, as Chief of the Intelligence Service, I had to report very often to Himmler. So he asked me on this occasion to make these reports. But Kruger was—as it surely appears in the document—State Secretary for the security system in the Government General. He Divas State Secretary there, and as State Secretary he was subordinate to the Governor General, and as State Secretary. ..

THE PRESIDENT: You are going too fast, and you are making far too much of a speech.

KALTENBRUNNER: . . . and as State Secretary for police matters in the Government General, he was, of course, immediately subordinate to Himmler. That must be...

MR. COUNSELLOR SMIRNOV: I beg you to answer briefly: Did Kruger ask you to report to Himmler on this subject or not? That is the only thing I am asking you.

KALTENBRUNNER: As far as I know, this meeting was a large meeting of administrative officials and everyone asked all those who were closest to the Fuehrer or Himmler...

MR. COUNSELLOR SMIRNOV: Tell me, "yes" or "no": Did he ask you to report, or not?

KALTENBRUNNER: I do not know that.

MR. COUNSELLOR SMIRNOV: So you do not know. Then I will ask you a second question.

KALTENBRUNNER: From the wording I can only take...

383

13 April 46

MR. COUNSELLOR SMIRNOV.: One moment.

KALTENBRUNNER: You are not allowing me to finish.

THE PRESIDENT: What did you say to the last question? Was not the question, "Did you go there?" Colonel Smirnov?

MR. COUNSELLOR SMIRNOV: I had another question to put, Mr. President.

THE PRESIDENT: I am asking you what your last question was.

MR. COUNSELLOR SMIRNOV: I asked the following question, Mr. President: Did Kruger report to Himmler through Kaltenbrunner? I was asking the defendant to answer "yes" or "no" and to abstain from making speeches.

THE PRESIDENT: What was your last question?

MR. COUNSELLOR SMIRNOV: Did Kruger ask Kaltenbrunner to report to Himmler on this subject. My second question—Mr. President, are you asking about my second question?

THE PRESIDENT: I wanted him to answer your question. Will you tell him what question you want him to answer. Don't ask him two; ask him one question. Can't you hear what I said?

MR. COUNSELLOR SMIRNOV: Yes, Mr. President.

THE PRESIDENT: Ask him one question, and see whether you can try and get him to answer it.

MR. COUNSELLOR SMIRNOV: Did Kruger ask for this tome reported to Himmler, and what did he say?

KALTENBRUNNER: It is possible that he did ask me but not as a superior. You must realize what type of assembly it was; that must also become apparent from the diary. I did not go there as the Chief of the Security Police, or as Kruger's superior; but Kruger, like dozens of other people, reported on the food situation, the administrative system...

MR. COUNSELLOR SMIRNOV: I would ask you to refrain from further explanations. You answered my question, and it is not worth continuing on the subject.

THE PRESIDENT: What is the matter, Dr. Seidl?

DR. SEIDL: Mr. President, a quotation from Frank's diary has been read to the Defendant Kaltenbrunner. Franks diary consists of 42 volumes and I should like to suggest that the prosecutor give the place and the volume and the date of the entry, so that one can determine in what connection that occurred.

THE PRESIDENT: Certainly, yes.

MR. COUNSELLOR SMIRNOV: Here we have a precise indication: This is a conference of 31 May 1943 in Krakow. There it is

headed "Technical Conference..." The document is registered as Exhibit Number USA-613, Document 2233 (aa)-PS.

THE PRESIDENT: This diary presumably got a date.

MR. COUNSELLOR SMIRNOV: That is correct. This conference took place on 31 May 1943; there is the date.

THE PRESIDENT: That is what Dr. Seidl wants to know.

MR. COUNSELLOR SMIRNOV: I have a second question to put to the defendant.

THE PRESIDENT: Go on.

MR. COUNSELLOR SMIRNOV: If, as the defendant says, he was exclusively employed on intelligence work and with nothing else, then did he consider the buying over of the Iran elections and the receipt from Ribbentrop of 1 million tomans to send to agents as entering purely within the scope of intelligence work?

KALTENBRUNNER: I certainly had nothing to do with the Buying of votes in Iran; but I admit, of course, that agents of my Intelligence Service did work in Iran.

MR. COUNSELLOR SMIRNOV: You did not ask Ribbentrop for 1 million tomans for bribery?

KALTENBRUNNER: No, I had sufficient means to pay my agents myself.

MR. COUNSELLOR SMIRNOV: This letter bearing Kaltenbrunner's signature has already been submitted to the Tribunal as Exhibit Number USSR-178, during Ribbentrop's crossexamination. Mention is made in this letter of the allocation of 1 million tomans. Does the defendant deny this evidence which Ribbentrop, himself, has admitted?

KALTENBRUNNER: I believe that I did not demand any money from Ribbentrop because I had enough money. Show me this letter. It might be quite possible. I had sufficient funds at my disposal for the intelligence service.

MR. COUNSELLOR SMIRNOV: The original of this letter has already been submitted to the Tribunal during Ribbentrop's interrogatory. We have only the copy but the original, of course, can be brought immediately from the document room. It is said here that:

"In order to exert a decisive influence on the election results, 400,000 tomans would be needed for bribes in Teheran and at least 600,000 tomans for the rest of Iran."

The letter ends as follows:

"I request you to tell me briefly if it would be possible to obtain 1 million tomans from the Ministry of Foreign Affairs.

It would be possible to transfer this money by people whom we are sending there by airplane.

"Hell Hitler. Your devoted Kaltenbrunner, SS Obergruppenfuehrer."

The contents of this letter are quite definite. Ribbentrop acknowledged the letter. Are you denying Ribbentrop's evidence?

KALTENBRUNNER: Not in the least, but I would like to add the following as far as this document is concerned. I cannot remember it easily because it was written in Office VI. I do not know the contents--did not know them until now. I am absolutely sure that I signed it, because it is a letter to a Minister of the Reich which, of course, for reasons of tact, I had to sign personally. As to the subject itself, I am grateful that the last question in this cross-examination is a question which actually refers to my sphere of activities proper. You are the first prosecutor to whom I must be grateful on that account, and who at last can no longer conceal the fact that my agents and my activities extended as far as Iran.

MR. COUNSELLOR SMIRNOV: Is that your signature?

KALTENBRUNNER: Yes.

MR. COUNSELLOR SMIRNOV: I have no further questions to put to this defendant, Mr. President.

THE PRESIDENT: What document is that you put to him then?

MR. COUNSELLOR SMIRNOV: This is Exhibit Number USSR-178, Mr. President.

THE PRESIDENT: 178?

MR. COUNSELLOR SMIRNOV: That is Kaltenbrunner's letter addressed to Von Ribbentrop, Minister of Foreign Affairs, dated 27 June 1943.

THE PRESIDENT: Very well. Thank you. Now, the Tribunal will deal with Dr. Thoma's documents for Rosenberg. Is the Prosecution ready? Are you ready, Mr. Dodd?

MR. DODD: Yes, Your Honor.

THE PRESIDENT: Would it be convenient for Mr. Dodd to tell us how the position stands? Would it be agreeable to you, Dr. Thoma, if Mr. Dodd tells us how the position stands?

DR. THOMA: Yes.

MR. DODD: Dr. Thoma has prepared three document books, and there are two volumes to the first book--two parts, two volumes and I should like to take up first, Volumes I and II of the first document book. In the first, Volume I.. .

THE PRESIDENT: The Tribunal has already looked at these volumes.

MR. DODD: Well, there is contained in the book that has been submitted to us a number of authorities, starting with that first document by Falckenberg, *The History of Modern Philosophy*, and running down to the *Introduction into the Psychology of the Nations*, by Hellpach; and really, as we understand the ruling of the Court, on the 8th of March, it stated that these books could be used so far as appropriate for the purpose of argument, and to this end they should be produced and made available to Defense Counsel; and the Court went on to say that any particular passage which Counsel for the Defense wish to quote should be incorporated in the document book for translation.

We object to all of these excerpts and for mostly the same reasons, and I think I can discuss them as a group rather than individually.

THE PRESIDENT: We have all read them, and we wish only to hear any arguments which Dr. Thoma desires to make comments upon.

DR. THOMA: Mr. President, I would like to stress that only the legal points of view prompt me to offer writings of contemporary historians as evidence in this Trial. The Tribunal has to decide whether there is a connection between Rosenberg's ideology and the war crimes and crimes against Jews.

I assert that, in addition to that ideology, other factors—so-called preliminary conditions, that is, the entire contemporary situation, the philosophical and mental outlook—contributed their part; but the main question is this: Did Rosenberg culpably anticipate the dangerous possibilities of his ideas and nevertheless promulgate them? In what manner can he be considered guilty if Rosenberg was convinced that his ideas were right, and if he was unaware of their dangerous development? I shall therefore indicate facts about the mental outlook of the time which prove that his ideas were perceived, and even partly championed by exact science. I will show that other countries introduced certain National Socialist measures, such as suppressing births of children unfit for life, even before Rosenberg's books were written. Further, I shall allude to the results of the investigations of natural science on the natural basis for the existence of man and the ensuing limitation of man's freedom. I shall point to the effects and consequences of a technical age; and I want to refer to the fact that irrational ideas and conceptions have been taken seriously even by rational empirical science; and I want to show how laws govern the development of philosophical concepts and political movements which are often inevitable. On the basis of these scientific conclusions, it is possible that Rosenberg underestimated or overlooked the dangerous side of his ideology—to wit, that all ideas and conceptions degenerate according

387

13 April 46

to the laws governing the human mind. The question of guilt, therefore, must be regarded in a new light and, in my opinion, also the question of carelessness should be examined. These theses will be extracted from works on natural science by Von Eickstedt, Muhlmann, Scheidt, Keiter, and from the philosophical works of Hellpach, Messer, Tillich, Buber et cetera.

Gentlemen of the Tribunal, the belief that a philosophy of the irrational might be applied to politics may sound ridiculous, but I would mention that only 15 years ago in Germany it was preached that a

policy based on Christian ethics was nonsensical, because Christian ethics could not be applied in the political sphere. Today we know that this is possible, and, therefore, I am pleading before a Tribunal who, to my conviction, receive their authority from these ethical motives. That is only one example for the importance of the irrational in politics. The belief in the power of the ideal and the moral is, after all, irrational, too.

Gentlemen of the Tribunal, the question of the causal connection between Rosenberg's ideology and the war crimes must not, or rather should not, be confused with the charge of Rosenberg's actual participation in the murder of the Jews and the crimes in the East. This has another connection. I will have to try to refute the actual participation of Rosenberg in these matters separately.

I would like to draw your attention to one more important viewpoint. Organizations, whose members formerly had in part been under the influence of Christianity and the so-called youth movement, and who let themselves be won over to National Socialism because they believed that by it their Christian and idealistic interests could be realized, are also indicated. They are now left helpless in their cam-PS, disappointed in this world. They, too, have the right to ask that the Tribunal be told what they believed in and what they had been taught. I believe that I have made it clear that I am not trying to deliver a lecture on aesthetics but that these are very important legal problems.

Gentlemen of the Tribunal, if any of the authors are unsuitable, then I shall forego quoting them. Perhaps Lapouge may not be suitable at all. I withdraw his work, although it is precisely Lapouge who points out that certain biological laws have also been applied in the legislation of other states. But Mr. Justice Jackson objected to a passage from Lapouge, and I withdraw it herewith. There are also one or two works of Martin Buber which I am willing to withdraw. But I particularly wanted to use Martin Buber to prove that we are concerned here with principles which have nothing whatsoever to do with anti-Semitism but merely represent a philosophy which is as justified as the philosophy of rationalism during

388

13 April 46

the last centuries. But I ask the Tribunal that, during the presentation of evidence, cognizance be taken only of actual philosophical historical proofs and facts. Gentlemen of the Tribunal, if I presented these facts in my address, I would run the risk of presenting only my own knowledge. That is why I need these documents.

THE PRESIDENT: Mr. Dodd, we understand that you object to all up to that book of Hellpach's. Then, with reference to the other volumes, the others are all Rosenberg's own documents, are they not?

MR. DODD: Except the two last.

THE PRESIDENT: Yes, the two last are in the same category, I suppose, as the ones down to Hellpach, are they not?

MR. DODD: Yes, there are also some quotations from newspapers contained in the document books, on Pages 182 to 185. We also made objection to them.

THE PRESIDENT: Are they in Volume II?

MR. DODD: Yes, they are in Volume II of Book 1.

THE PRESIDENT: I was dealing, at the moment, with Volume I of Document Book 1.

MR. DODD: That was the objection in Volume I.

THE PRESIDENT: Then, you are not objecting to his other books?

MR. DODD: No, Your Honor, we are not.

THE PRESIDENT: Then, in Book 2 there is not an index, is there?

MR. DODD: We have no objection to anything that is contained in Book 2.

THE PRESIDENT: In Volume II to Book 1?

MR. DODD: We were talking about Volume II, Book 1.

THE PRESIDENT: Very well; yes, I see. Then in Book 2—you do not object to Book 2?

MR. DODD: No, we do not.

THE PRESIDENT: Nor Book 3?

MR. DODD: No, we have no objection to Book 3. I think our Russian colleagues have an objection to the affidavit of Dr. Dencker. I would prefer, however, that they address the Tribunal on that subject themselves.

THE PRESIDENT: "And then, is there a fourth book?"

MR. DODD: No, Your Honor, there is not, but we have not talked about the second part of the first book.

THE PRESIDENT: I was told that you had.

389

13 April 46

MR. DODD: No, I think not. I did mention the newspaper articles.

THE PRESIDENT: Where are these documents that you are referring to, in the second volume of the first book?

MR. DODD: The first one will be found beginning on Page 182 of that second volume of the first book.

THE PRESIDENT: Yes, those are the last two in the index.

MR. DODD: Yes, they are.

THE PRESIDENT: We understand that you are objecting to them.

MR. DODD: Yes.

THE PRESIDENT: But the index in the first volume of the first book is the index for both the volumes.

MR. DODD: Yes, it is.

THE PRESIDENT: And what you are objecting to is all documents up to Hellpach and the last two?

MR. DODD: Yes, that is exactly right.

THE PRESIDENT: I understand. Then, with reference to Books 2 and 3 you do not object, but the Soviet Union wishes to offer an objection to this affidavit by Professor Dencker.

MR. DODD: That is exactly right, Your Honor.

THE PRESIDENT: Perhaps we had better hear what the Soviets say about that.

STATE COUNSELLOR OF JUSTICE M. Y. RAGINSKY (Assistant Prosecutor for the U.S.S.R.): I invite the Tribunal's attention to Document Rosenberg-38. This is in the third document book, Page 29. This document is a letter, dated 24 August 1931.

THE PRESIDENT: One moment, is it not an affidavit?

MR. COUNSELLOR RAGINSKY: No. I am referring to two documents, Mr. President, Document Rosenberg-38 and the second one dealing with Dencker's affidavit.

THE PRESIDENT: All right. Yes, I got Page 21. We will deal with Document 38 first, that is Page 29.

MR. COUNSELLOR RAGINSKY: This document is the letter of an unknown wine merchant, addressed to Rosenberg, concerning some sort of newspaper paragraph. We do not know this newspaper paragraph since defense counsel, Dr. Thoma, has not submitted it; and, therefore, we believe it is not relevant to the matter and all the more so since in none of his claims and in none of his explanations did Dr. Thoma explain what this document was supposed to prove nor what this letter was about.

I would then like to mention a few considerations regarding the second document, concerning Dencker's affidavit presented by

390

13 April 46

defense counsel Dr. Thoma. This affidavit is also in the third document book, Pages 811, and is registered as Rosenberg Number 35. Judging by the contents, Dencker, a former member of Economic Staff East, participated in the perpetration of war crimes in the territories occupied by the German troops. This Dencker took part in the looting of the occupied territories of the Soviet Union.

I wish to draw the Tribunal's attention to the fact that defense counsel, Dr. Thoma, on 6 April of this year, requested the Tribunal to allow the admission of this document, and the General Secretary of the Tribunal got the opinion of the Prosecution. However, before the Tribunal had made up its mind, before the Prosecution had come to a conclusion, Dencker's affidavit was included in the document book, mimeographed and distributed to everybody. What, may I ask, is this affidavit? We consider, and it is very easy to prove, that the information contained in this affidavit throws a false light clothe factual state of affairs. It contains a number of slanderous and incorrect statements which have already been refuted thy various documents submitted to the Tribunal and read into the record. Therefore, inasmuch as Dencker has not been summoned before the Tribunal as a witness and we are deprived of the possibility of exposing the mendacity of his evidence under crossexamination, we consider that these documents should not be admitted by the Tribunal.

THE PRESIDENT: Yes, Dr. Thoma.

DR. THOMA: Gentlemen, I agree that Professor Dr. Dencker, who states that 180 million Reichsmark worth of tractors and other agricultural machinery was taken to the Ukraine, should be called as a witness. But this document is striking evidence of the fact that reconstruction was in process in the Ukraine, that an efficient administration was intended, that the land was not to be stupidly exploited, but that long-term plans were made in the interest of the country and the population. I, therefore, ask the Tribunal to admit this affidavit in evidence. If necessary, I shall make an application that Professor Dencker-in Bonn-be called. as a witness, in case the Tribunal should be impressed with the statement of the Soviet Prosecutor.

THE PRESIDENT: Yes.

DR. THOMA: And also, Mr. President, I beg your pardon, but I did not understand the previous objection regarding Document Book Number 3. I do not have my Document Book Number 3 with me, and I do not know what the objection was.

THE PRESIDENT: On Page 29 is a letter addressed to Rosenberg by somebody without signature. It is Rosenberg-38.

391

13 April 46

DR. THOMA: Oh, yes; but that document has been admitted by the Tribunal, and the signature is "Adolf Hitler." Apparently, the typist was not able to read that.

THE PRESIDENT: It is a letter, is it?

DR. THOMA: Yes, Sir; it has already been approved. It has been approved, Gentlemen. But, I beg to apologize; I still do not quite understand. Is Hellpach the only one of my entire document book who has been approved? Is it Sir David's or Mr. Dodd's wish that only Hellpach should be quoted and nobody else? In that case I should like to have an opportunity to go a little into detail on what the other authors were intended to prove. For instance, I...

THE PRESIDENT: We have not made any decision yet.

DR. THOMA: Yes.

THE PRESIDENT: We thought that you had given us the reasons in support of the documents in Book 1, Volumes I and II.

DR. THOMA: Yes.

THE PRESIDENT: If you have given us the reasons, it is not necessary for you to say anything further.

DR. THOMA: Yes, Mr. President; but I thought that, with reference to the different books, I might state very briefly what I wished to prove.

With Messer, Tillich, Leeuw, and Bergson, I am trying to prove that neo-romanticism—that is, the philosophy of the irrational, whose forerunner was Rousseau-invaded Germany with elementary force and was at the same time influenced by French, English, and American philosophers.

Secondly, through Martin Buber I wish to prove that this philosophy is not anti-Semitic, but that, on the contrary, Martin Buber not only preached this philosophy but also recommended its application in practice; it is precisely Martin Buber's work wherein we find those vital terms and expressions, which have acquired such importance in this Trial, such as the significance of blood, the myth of blood, the relation between national character and living space, of intuition, of the concepts of movement, of the character of inheritance, and so forth.

And further, Gentlemen of the Tribunal, in connection with these quotations from Eickstedt, Muhlmann, Scheidt, Keiter, I wish to state that these authors are not National Socialists, but that, in fact, they were partly opposed to Rosenberg's ideology; but they are proof of the fact that the concepts of race, people, nation, blood, and soil, et cetera, are recognized by natural science experts. And Hellpach, in his Introduction to the Psychology of Nations, made the extremely

392

13 April 96

important statement—and Hellpach is a very famous name in German philosophic literature—that every thesis leads to a synthesis and eventually breaks down.

Gentlemen, I have only one brief concluding remark to make. In the last number of Die Neue Zeitung there was an article to the effect that in the French Constituent Assembly a few days ago a discussion on one of the most important and basic issues of our times had begun, a discussion on the rights of man—during which the inner attitude of the members of the resistance was examined and definite theses were set up regarding liberty and the crises liable to affect the rights of man, and various contradictions were pointed out.

THE PRESIDENT: Yes.

DR. THOMA: And, Gentlemen, the following was established: There is a contradiction between the preaching of liberty and the ever greater enslavement by the machine. That is exactly what we assert.

Secondly, there is a contradiction between the increase of material wealth and the decrease of spiritual values. Thirdly, contradiction is involved in every type of progress, in that every improvement is counterbalanced by corresponding decadence. Fourthly, there is an opposition between the ideals of humanism of the 18th century and the discoveries of the science of the human being—biology and Psychoanalysis—which demonstrate that man is subject to the laws of nature.

Fifthly, contradiction between the broad masses of people who are "enlightened" by such superficial means as newspapers, radio, motion pictures, and all types of propaganda, and the disappearance of a thinking and cultured elite.

That was the subject of debate in the Constituent Assembly of the present French Parliament, and that is why I suggest, Gentlemen, that such questions also have a place in this Trial, since they are indicative of the political and mental attitude of the people, because highly ethical consideration may be derived from the concept of nationality. The fact that they have deteriorated is due to philosophical and biological process and partly to training, but only in part.

THE PRESIDENT: Have you finished, Dr. Thoma? Have you finished what you wanted to say?

DR. THOMA: Yes, Sir.

THE PRESIDENT: The Tribunal, of course, has not made its decision yet, and it will consider your arguments. But I am bound to point out to you that there is no charge in the Indictment or in this case against the Defendant Rosenberg either that he invented his philosophy, or that he held certain philosophical ideas. The

393

13 April 46

charge against him is that he made a certain use of his philosophical ideas. That is all I have to say.

The only other matter which I want to mention to you is an application you made for calling Rosenberg, not first, but at some other point in the course of his case; and as to that, if the Tribunal should come to the conclusion that these other philosophical works are not matters which ought to be considered, is it not really unnecessary to put off the calling of the Defendant Rosenberg to some later stage? Would it not be in the interests of expedition that he should be called first?

DR. THOMA: Mr. President, there are two things I might say to that. I was under the erroneous impression that any evidence that is taken must begin with the hearing of the accused. I assumed that documents could not be read prior to that, and that is why I asked that I be allowed to produce some introductory documents first, so that the examination of the Defendant Rosenberg could proceed more smoothly, because in my opinion the Tribunal would become acquainted with the facts much more quickly through the documents. Furthermore, I asked for the Witness Riecke, who could also quickly acquaint you with the Eastern problems and particularly with the food problem and who would expedite matters if he were heard before Rosenberg. That is how I planned it. I would like to read in the first sequence the most important documents first—not only the ideological ones, but all those concerning

the Einsatzstab and the administration of the East; then I would like to call the witness Riecke, and after that the Defendant Rosenberg.

THE PRESIDENT: Well, the Tribunal has already indicated that in its opinion, in every ordinary case, it tends to expedition if the defendant is called first; and, of course, any document which is material can be put to the defendant in the course of his evidence for any explanation which he may have to give upon it.

DR. THOMA: I believe, Your Honor, that if I were to make very brief remarks concerning the documents, it would take less time than if Rosenberg dealt with the individual documents. That is why I thought I might read some of the documents at the start, only to save time.

THE PRESIDENT: Well, in order that you should be prepared and able to go on on Monday morning, the Tribunal, having considered this matter, rules that Rosenberg should be called first. That is the ruling of the Tribunal.

As to the documents, we will consider what our judgment shall be with reference to the documents which are objected to.

I said Monday morning. I beg your pardon. I meant at the end of the Defendant Kaltenbrunner's case.

394

13 April 46

DR. THOMA: Your Honors, I merely wish to say a few words with reference to Rosenberg's ideology. I am asking the Tribunal to read the speech by M. De Menthon, who states that this ideology was in itself criminal since it was related to his activity as editor and publisher of the *Volkischer Beobachter* and as author of the *Myth* and other writings. He says that in this way he psychologically prepared the German nation for an offensive war.

THE PRESIDENT: I said that it was not a question of what was the origin of his philosophy or the mere holding of the philosophical ideas, but the use to which he puts these philosophical ideas. Well, the Tribunal will consider it.

MR. DODD: If Your Honor please, I want to make it clear that we do object to the works of Hellpach. I rather gather that Dr. Dix had asked me to request that his documents be heard today.

THE PRESIDENT: I think it is too late now, but we will consider them shortly if Dr. Dix wishes it. We will consider them very soon.

DR. DIX: I would appreciate that. We discussed it first with Sir David, and then I discussed it with Dr. Dodd and Mr. Albrecht, and these gentlemen have raised objections which should be brought before the Court. But translations have not yet been made, and a decision ought to be made soon, or else the document book will not be ready. I would appreciate it if we could briefly discuss that on Monday.

THE PRESIDENT: We will try to do it on Monday.

DR. DIX: On Monday?

THE PRESIDENT: Yes.

[The Tribunal adjourned until 15 April 1946 at 1000 hours.]

395

